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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,658	09/30/2003	Eden Dubuc	13524	5807

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ORUM & ROTH  
53 W. JACKSON BLVD  
CHICAGO, IL 60604

EXAMINER

TSIDULKO, MARK

ART UNIT	PAPER NUMBER
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2875

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/675,658

Applicant(s)

DUBUC, EDEN

Examiner

Mark Tsidulko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 and 45-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33-43 and 46-57 is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-29 and 32 is/are rejected.
- 7) ☒ Claim(s) 10, 11, 30 and 31 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>300903</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

The submission of amendment filed on 9/09/2005 is acknowledged. At this point claims 9, 16, 17, 33, 41, 45 and 51-54 have been amended, claim 44 has been canceled, new claims 55-57 have been added and the remaining claims left unchanged. Thus, claims 1-43, 45-57 are at issue in the instant application.

#### *Drawings*

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *carrier* disclosed in the claims must be shown having a reference character or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

The disclosure is objected to because of the following informalities: *carrier* is not disclosed in the specification.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 17, 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Lys et al. (US 6,340,868).

Referring to Claim 1 Lys et al. disclose (Fig.23) a lighting device including a plurality of LEDs [15] mounted on a PCB [37] which is attached to the carrier [648] having a heat sink, a power supply (Fig.3, [180] and Fig.12) and a clamp [Fig.77, [1016]] for mounting the device (col.43, lines 27-31).

Referring to Claims 6, 26 Lys et al. disclose (Fig.23) a base [648] having a channels for receiving a PCB.

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Referring to Claim 17 Lys et al. disclose (Fig.23) a lighting device including a plurality of LEDs [15] mounted on a PCB [37] which is attached to the carrier [648] having a heat sink, a mounting slot [654], a power supply (Fig.3, [180] and Fig.12), and a clamp [Fig.77, [1016]] for mounting the device (col.43, lines 27-31).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 9, 12-16, 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lys et al. (US 6,340,868).

Referring to Claims 2, 22 Lys et al. discloses the instant claimed invention except for attachment to a greenhouse frame.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the clamp of Lys et al. for attachment to any desired frame regardless to the place where this frame is installed.

Referring to Claims 3, 4, 23, 24, 29 Lys et al. discloses the instant claimed invention except for sizes of carrier and PCB. It would have been an obvious matter of design choice to provide the carrier and the PCB having any desired dimensions depending on necessity, since such a modification would have involved a mere change in the size of a component. A change in

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size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Referring to Claims 5, 25 Lys et al. disclose the instant claimed invention except for two PCBs. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the two PCBs attached to the carrier, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

Referring to Claims 9, 29 Lys et al. disclose (Fig.23) a base [648] having extrusions [652] and intrusions [654], so that the base blocks [648] can be interconnected. It is clear from this structure, that the power supply is remote from the carrier (base [648]) in order to use one power supply for a plurality of blocks.

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to use the remote power supply, in order to obtain a plurality interconnected lighting blocks as a whole one device.

Referring to Claims 13-16, 18-21 Lys et al. disclose (Fig.23) a plurality of LEDs, but do not disclose a wavelength.

Claims 7, 8, 12, 27, 28, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lys et al. (US 6,340,868) in view of Custers et al. (US 6,305,874).

Referring to Claims 7, 8, 27, 28 Lys et al. disclose the instant claimed invention except for metal core PCB.

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Custers et al. disclose a plurality of LEDs mounted on the metal core PCB wherein metal plate is used as a heat-dissipating device. It is clear from the structure, shown on Fig.23, that the PCB [37] can be slidably moved in the channel.

Referring to Claims 12, 32 Lys et al. disclose a heat sink (see Fig.23).

Referring to Claim Lys et al. disclose a power supply (Fig.3, [180]).

It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to provide the metal core PCB, as taught by Custers et al. for the device of Lys et al., in order to increase the heat dissipation property of the device.

***Allowable Subject Matter***

Claims 10, 11, 30, 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Referring to Claims 10, 30 the prior art of record fails to show a shim to secure the PCB in the channel.

Claim 11 is objected, as claim depended on claim 10.

Claim 31 is objected, as claim depended on claim 30.

Claims 33-43, 45-57 are allowed.

Referring to Claim 33, 55-57 the prior art of record fails to show a shim to secure the PCB in the channel.

Claims 34-43 and 45-54 are allowed, as claim depended on claim 33.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

Applicant's arguments filed 9/09/2005 have been fully considered but they are not persuasive.

Referring to Claims 1 and 17 Applicant argues, that Lys et al. does not teach a clamp adapted to mount the modular platform.

In response, the clamp [1016] (Fig.77) is used for mounting the lamp [1012], as claimed in a claim 1. Clamp, which is kind of attachment means, may be used for attachment anything to anything (if structure allows), not only lamp or modular platform.

In response to applicant's argument that *clamp adapted to mount*, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to applicant's arguments, the recitation "*greenhouse lamp*" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See



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*In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Tsidulko whose telephone number is (571)272-2384. The examiner can normally be reached on 8 - 5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M.T.  
September 19, 2005



JOHN ANTHONY WARD  
PRIMARY EXAMINER